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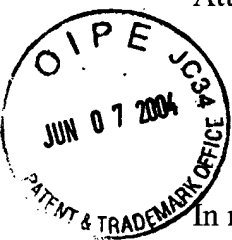
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Attorney's Docket No. 045600/274143

PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Carozzi et al. Confirmation No.: 5814  
Appl. No.: 10/782,141  
Filed: February 19, 2004  
For: AXMI-014, A DELTA-ENDOTOXIN GENE AND METHODS FOR ITS USE

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Petition To Grant Filing Date And To Refund Petition Fee**

As set forth in MPEP §506.02, Applicant hereby petitions to grant the proper filing date of February 19, 2004 rather than February 20, 2004 for the above-identified patent application. The following is enclosed as evidence of February 19, 2004 being the correct filing date under 37 CFR § 1.10:

1. A copy of the Cover Sheet for the Application showing the Express Mail Number;
2. A copy of the Express Mail Receipt marked by the United States Post Office as being mailed on February 19, 2004; and
3. A copy of our return post card from the United States Patent Office showing that Applicant was improperly given the filing date of February 20, 2004 instead of February 19, 2004.

There is no error on the part of Applicant. Accordingly, Applicant respectfully requests the granting of February 19, 2004 as the filing date.

A check in the amount of \$130.00 in payment of the petition fee as set forth in 37 CFR §1.17(i) is enclosed herewith. Any additional fee may be charged or any overpayment credited

06/09/2004 JADD01 00000068 10782141

02 FC:1460

130.00 0P

In re: Carozzi et al.  
Appl. No.: 10/  
Filing Date: February 19, 2004  
Page 2

to our Deposit Account No. 16-0605. Because no defect existed, however, Applicant also respectfully requests refund of the petition fee.

Respectfully submitted,

*Karen M. Morse*

Karen M. Morse  
Registration No. 54,324

**CUSTOMER NO. 00826**

**ALSTON & BIRD LLP**

Bank of America Plaza

101 South Tryon Street, Suite 4000

Charlotte, NC 28280-4000

Tel Raleigh Office (919) 862-2200

Fax Raleigh Office (919) 862-2260

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on June 3, 2004

*Nora C. Martinez*

Nora C. Martinez

<b>UTILITY PATENT APPLICATION TRANSMITTAL</b> <small>(Only for new nonprovisional applications under 37 CFR 1.53(b))</small> <b>JUN 07 2004</b>	Attorney Docket No. 045600/274143
	First Inventor Nadine Carozzi
	Title AXMI-014, A DELTA-ENDOTOXIN GENE AND METHODS FOR ITS USE
	Express Mail Label No. EV 387067085 US

ADDRESS TO MAIL STOP PATENT APPLICATION  
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**COPY**

Transmitted herewith for filing in the United States Patent Office is a patent application for:

Inventors: Nadine Carozzi; Tracy Hargiss; Michael G. Koziel; Nicholas B. Duck; Brian Carr

Assignee of this invention is Athenix Corporation

1. ☒ The Filing Fee has been calculated as shown below:  
2. ☒ Applicant claims Small Entity Status. See 37 CFR 1.27.

		Small Entity		Large Entity	
No. Filed	No. Extra	Rate	Fee 1	Rate	Fee 0
BASIC FEE			\$ 385		\$ 0
TOTAL CLAIMS:	23 - 20 = 3		X 9 = \$ 27		x 18 = \$ 0
INDEP CLAIMS:	4 - 3 = 1		X 43 = \$ 43		x 86 = \$ 0
[ <input type="checkbox"/> ] MULTIPLE DEPENDENT CLAIMS PRESENTED			+145 = \$ 0		+290 = \$
*If the difference in Column 1 is less than zero, enter "0" in Column 2.		TOTAL	\$ 455	TOTAL	\$

The Commissioner is hereby authorized to credit overpayments or charge the following fees to Deposit Acct. No. 16-0605.

- a. ☒ Fees required under 37 CFR 1.16 (National filing fees).  
b. ☒ Fees required under 37 CFR 1.17 (National application processing fees) including any extension of time fees under 37 CFR § 1.136(a) that are required for consideration of papers filed during prosecution.

☒ A check in the amount of \$ 455.00 for the filing fee is enclosed.

☐ The above filing fee will be paid along with Applicant(s) Response to the Notice to File Missing Parts.

3. ☒ Specification; Total Pages 45  
4. ☒ 3 Sheets of Drawing(s) (35 USC 113)

5. ☐ Declaration and Power of Attorney; [Total Pages    ]  
     a. ☐ Newly executed (original or copy)  
     b. ☐ Copy from a prior application (37 CFR 1.63(d))  
         *(for continuation/divisional with Box 18 completed)*  
         i. ☐ DELETION OF INVENTOR(S) Signed statement attached deleting inventor(s)  
             named in the prior application, see 37 CFR 1.63(d)(2) & 1.33(b).
6. ☒ Application Data Sheet. See 37 CFR 1.76
7. ☐ CD-ROM or CD-R in duplicate, large table or Computer Program (Appendix)
8. Nucleotide and/or Amino Acid Sequence Submission (if applicable, all necessary)  
     a. ☒ Computer Readable Copy (CRF)  
     b. ☐ Request for Transfer of Computer Readable Form of Sequence Listing  
         under 37 CFR § 1.821(e) and MPEP 2422.05 (must be compliant with new rules)  
     c. ☒ Specification Sequence Listing on:  
         i. ☐ CD-ROM or CD-R (2 copies); or  
         ii. ☒ Paper (47 Pages)  
     d. ☒ Statements verifying identity of above copies

#### ACCOMPANYING APPLICATION PARTS

9. ☐ Assignment Papers (cover sheet & document(s) (including a check for the \$40.00 fee)
10. ☐ 37 CFR 3.73(b) Statement *(when there is an assignee)*; ☐ Power of Attorney
11. ☐ English Translation Document *(if applicable)*
12. ☐ Information Disclosure Statement (IDS)/PTO-1449;     Copies of IDS Citations
13. ☐ Preliminary Amendment
14. ☒ Return Receipt Postcard (MPEP 503) *(Should be specifically itemized)*
15. ☐ Certified Copy of Priority Document(s) *(if foreign priority is claimed)*  
☐ Foreign Priority is claimed as Application No.    , filed
16. ☐ Nonpublication Request under 35 U.S.C. 122(b)(2)(B)(i).  
 Applicant must attach form PTO/SB35 or its equivalent.
17. ☐ Request for Early Publication Under 37 CFR § 1.219. Fee of \$300.00 is enclosed.
18. **If a CONTINUING APPLICATION, check appropriate box and supply the requisite information below  
 and in a preliminary amendment, or in an Application Data Sheet under 37 CFR 1.76:**  
☐ Continuation ☐ Divisional ☐ Continuation in Part (CIP)  
 of prior Application No:    ; Filed

Prior Application Information: Examiner

Group/Art Unit:

For CONTINUATION or DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

19. CORRESPONDEN ADDRESS CUSTOMER NUM. R 00826

Signature: Karen M. Morse

Agent of Record: Karen M. Morse

Agent Registration No. 54,324

**Alston & Bird LLP**

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Marilyn Muñoz  
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Atty. Dkt. No. 045600/274143

Kindly acknowledge receipt of the accompanying UTILITY PATENT

APPLICATION with Application Transmittal Cover Sheet for: Inventor(s):

Carozzi *et al.*

Title of Invention: AXMI-014, A DELTA-ENDOTOXIN GENE AND METHODS FOR ITS USE.

Pages of Spec. (including claims and abstract) 45; No. of Claims 23

No. of Drawing Sheets 3; Other Documents: Statement in Support of Filing a

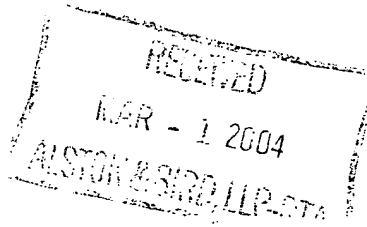
Sequence Listing (1 pg.); Sequence Listing (47 pgs.); Computer Readable File (1

diskette); Application Data Sheet (5 pgs.)

Check(s) Enclosed

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Muñoz/KMM, ALSTON & BIRD LLP



**ALSTON & BIRD LLP**  
**3201 BEECHLEAF COURT**  
**SUITE 600**  
**RALEIGH, NC 27604-1062**

22856 U.S. PTO  
10/782141

